Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

October Term 1999

IN RE: WILLIAM COY ARNETT,

Petitioner,

vs.

UNITED STATES OF AMERICA,
National Highway Traffic Safety Administration,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

WILLIAM COY ARNETT
PRO SE
1472 Wadesboro Road
Mayfield, Kentucky 42066-2515
(270) 345-2475

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

WILLIAM COY ARNETT, ET AL. PLAINTIFFS

vs. CIVIL ACTION NO. 5:97CV-172-R

UNITED STATES OF AMERICA DEFENDANT

MEMORANDUM OPINION

Plaintiff, William Coy Arnett, filed a pro se action on behalf of himself and seven other deceased individuals.[1] The suit concerns disagreements between Arnett and the National Highway Traffic Safety Administration (agency) of the United States Department of Transportation. The United States filed a motion to dismiss under Federal Rule of Civil Procedure 12.

I.

Arnett filed the instant action claiming that air bags, installed in motor vehicles pursuant to 49 U.S.C. § 30127 and/or Federal Motor Vehicle Safety Standard 208 or "other rules promulgated by the National Highway Traffic Safety Administration, are responsible for injury and death suffered by numerous motorists. He assigns liability for these deaths and injuries to the agency. Arnett claims that the statute, standards or rules violates his rights under the Fifth Amendment to the United States Constitution, *i.e.*, deprivation of life without due process of law.

Arnett requests issuance of several orders. First he seeks declaration that 49 U.S.C. §§ 30122 and 30127, Federal Motor Vehicle Safety Standard 208 and other agency rules or statutes are

[1]Nothing in the complaint demonstrates Arnett's authority to file the instant action on behalf of the deceased plaintiffs' estates. The suit, therefore, is considered to be filed only by Arnett as an individual plaintiff.

unconstitutional and violative of his rights under the Fifth Amendment. Second, he asks this Court to issue orders to all car manufacturers directing them to refrain from installing inflatable restraints or air bags in newly manufactured vehicles as well as recalling all previously manufactured vehicles for the purpose of removing the restraints / air bags. Finally, he seeks an order directing appointment of a special prosecutor to investigate the agency's actions regarding air bags.

II.

The United States filed a motion to dismiss. The United States contends that this Court lacks subject matter jurisdiction over the instant action. Arnett responded to the motion to dismiss. For the reasons that follow, the motion to dismiss will be **GRANTED**.

In essence, Arnett seeks a declaration from this Court that the federal statutes, rules and regulations concerning installation of air bags are unconstitutional. In support of this claim, he contends that the statutes, rules and regulations cause the deprivation of life without due process of law in violation of the Fifth Amendment to the United States Constitution.

Standing

Article III,§ 2 of the United States Constitution limits the jurisdiction of federal courts to a dispute only if it is a "case" or "controversy." This is a "bedrock requirement." *Raines v. Byrde*, 117 S. Ct. 2312, 2317 (1997)(citing *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U. S. 464, 471 (1982). "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Id.* (quoting, *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 37 (1976)).

One element of the case or controversy requirement is that the plaintiff, based on his complaint, must establish that he has stand-

ing to sue. Id. (citing *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 561 (1992)). The inquiry focuses on whether the plaintiff is the proper party to bring the suit and "often turns on the nature and source of the claim asserted." *Id.* (citations omitted) To meet the standing requirements of Article III, "[a] plaintiff must allege personal injury fairly traceable to the defendant's unlawful conduct and likely to be redressed by the requested relief." *Id.*, (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)). A plaintiff must establish that he has a "personal stake" in the alleged dispute, and that the alleged injury suffered is particularized as to him. *Id.* (citing *Lujan*, 504 U. S. at 560-61 and n. 1)(to have standing, the plaintiff must have suffered a "particularized" injury, which means that "the injury must affect the plaintiff in a personal and individual way"); *Bender v. Williamsport Area School Dist.*, 475 U. S. 534, 543-544 (1986); *Simon*, 426 U.S. at 39).

Plaintiff must also demonstrate that the alleged injury is legally and judicially cognizable. *Id.* Among other things, plaintiff must show that he suffered "an invasion of a legally protected interest which is . . . concrete and particularized." *Id.* (quoting *Lujan*, 504 U. S. at 560). Additionally, the dispute must be "traditionally thought to be capable of resolution through the judicial process." *Id.* (quoting *Flast v. Cohen*, 392 U. S. 83, 97 (1968)). "Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable?" *Id.* (quoting *Allen*, 468 U.S. at 752).

The Supreme Court has always insisted on strict compliance with the jurisdictional standing requirement. *Id.* (citations omitted). The standing inquiry should be "especially rigorous" when reaching the merits of the dispute would force the court to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional. *Id.* at 2317-18. Before addressing the merits of plaintiff's allegations, this Court must carefully inquire as to whether plaintiff has met his burden of establishing that the claimed injury is personal, particularized, concrete, and otherwise judicially cognizable. *Id.*

at 2318.

Careful consideration of the allegations set forth in the complaint reveals that plaintiff has failed to demonstrate standing to bring the instant action. The agency correctly notes that the only harm asserted by plaintiff is the threat of future harm. Specifically, he claims that his inability to have the air bag in his vehicle deactivated or removed by an automobile mechanic places him at risk to be deprived of "life, liberty and property without due process of law." Plaintiff further claims awareness of "the possible dire consequences" of having the air bags remain in his car. However, in order to reach the perceived harm, one must assume the following: (a) plaintiff will be involved in an automobile accident; (b) the accident will cause the air bags(s) to deploy; and (c) deployment of the air bag(s) will result in physical harm to plaintiff. The alleged deprivation in indeed speculative.

Plaintiff has not demonstrated a prior or existing harm. The sole basis of his complaint rests on the threat of possible future harm. He has failed to show that the perceived harm will ever occur and, therefore, the alleged deprivation is not judicially cognizable. *See City of Los Angeles v. Lyons*, 461 U. S. 95, 102-105 (1983); *Johnson v. Turner*, 125 F. 3d 324, 336 (6th Cir. 1997). Thus, he lacks standing to bring the instant action.

Plaintiff is not completely without remedy. He may, through his own action, deactivate the air bags in his own vehicle. The agency correctly notes that the "make inoperative" provision at issue in plaintiff's complaint, 49 U.S.C. § 30122, applies only to commercial entities. It is not directed to vehicle owners or their personal conduct.

Injunctive relief

Plaintiff has requested relief beyond the bounds of this Court's authority. The Court cannot and will not issue orders to corporations who not parties to the instant suit. The Court has no authority over such entities. Furthermore, the Court cannot issue orders directing the violation of federal statutes, rules and/or regulations.

Finally, the Court is without authority to appoint independent counsel, characterized by plaintiff as a "special prosecutor." Chapter 40 of United States Code Title 28 governs independent counsel. *See* 28 U.S.C. §§ 591, *et seq.* The Attorney General of the United States is charged with the responsibility of investigating whether an independent counsel should be appointed. 28 U.S.C. § 591. The circumstances under which counsel may be appointed are limited. *Id.* While the statutory scheme regarding independent counsel includes provisions for court action, nothing in the statute vests this particular Court with any authority over the matter. *See* 28 U.S.C. § 593.

Conclusion

For the reasons set forth more fully above, the motion to dismiss will be **GRANTED** and the action **DISMISSED** by separate order for lack of jurisdiction.

This 15 day of January , 1998.

THOMAS B. RUSSELL
UNITED STATES DISTRICT JUDGE

cc: Plaintiff, *pro se*
Counsel

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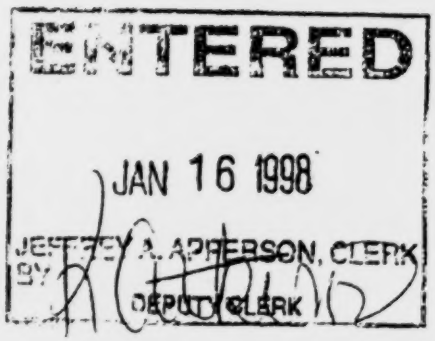

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ORDER

For the reasons set forth in the Memorandum Opinion entered this date, **IT IS ORDERED** that the United States' motion to dismiss is **GRANTED** and the instant action is **DISMISSED** for lack of jurisdiction.

There being no just reason for delay in its entry, this is a final Order.

This 15 day of January, 1998.

THOMAS B. RUSSELL
UNITED STATES DISTRICT JUDGE

cc: Plaintiff, *pro se*
Counsel

4413.001

ENTERED
JAN 16 1998
JEFFREY A. APPERSON, CLERK
BY DEPUTY CLERK